

REMARKS

Favorable reconsideration is respectfully requested in view of the following remarks.

Claims 1, 7-13, 15, 16 and 33-40 were pending in this application when last examined and stand rejected.

In item 1 on pages 5-7 of the Office Action, the Examiner rejected claims 1, 7-12 and 33-37 under 35 U.S.C. § 103(a) as being unpatentable over previously cited Yoshino et al. (Neurological Therapeutics, 2003, Vol. 20, pp. 557-564).

Further, in item 2 on pages 7-8 of the Office Action, the Examiner rejected claims 15, 16, 39 and 40 under 35 U.S.C. § 103(a) as being unpatentable over Yoshino et al., further as evidenced by previously cited Ikeda (WO 02/34264, with English counterpart US 6,933,310).

Finally, in item 3 on pages 8-9 of the Office Action, the Examiner rejected claims 13 and 38 under 35 U.S.C. § 103(a) as being unpatentable over Yoshino et al., further in view of Ikeda.

Applicants respectfully traverse these rejections.

In the previous Office Action, the Examiner indicated that the rule 1.132 Declaration filed with the amendment of November 22, 2011 was insufficient as the superior ALSFRS-R score was not considered significant enough or unexpected. Applicants respectfully disagree. In particular, attached herewith is a Declaration by a person of skill in the art further explaining why such score is surprising and unexpected and particularly averring that such improvement by the claimed invention is surprising and unexpected.

The Declarant particularly noted that the score difference between the cited Yoshino and the claimed invention decreased the risk of death or tracheotomy by 16% in 2 years and 42% in 5 years. Furthermore, the improvement in score of the claimed invention over Yoshino et al. over a year period can result in drastic improvements in the patient's quality of life as shown in the attached reference.

In particular, it is the Declarant's opinion and belief that the claimed methods improvement in the ALSFRS-R score is surprising and unexpected to a person of skill in the art for the below-noted reasons.

Amyotrophic lateral sclerosis (ALS) is an incurable disease. Unless a patient of ALS undergoes a tracheotomy and uses an artificial respirator, the patient will usually die within 2 to 5 years. At present, there is no therapy for completely curing ALS. Thus, maintaining the Quality of Life (QOL) of patients is the current therapy for ALS.

When the results of Yoshino et al. (Neurological therapeutics (2003) 20:557-564) are compared to the claimed invention, the ALSFRS-R score is improved by 0.6 points by use of the claimed invention. This ALSFRS-R score difference of 0.6 points arose in a half year. Thus, the ALSFRS-R score difference is 1.2 points in one year, 2.4 points in two years, and 6.0 points in five years.

It is the Declarant's opinion and belief that these score differences between Yoshino and the claimed invention are surprising and unexpected to a person of skill in the art.

In Neurology 2005; 64:38-43 which was cited in the Declaration submitted November 22, 2011, it is mentioned that an ALSFRS-R score increase of 1.0 point increases the risk of death or tracheotomy by 7%. Thus, in the method of the claimed invention, the risk of death or tracheotomy is decreased by about 16% in two years, and by about 42% in five years, as compared with the case of Yoshino et al.

Further, attached to the Declaration is an article from the Journal of the Neurological Sciences, 169, 1999, pp. 13-21. This journal shows the breakdown for the ALSFRS-R score. The score corresponds to 12 different categories which are each ranked from 0-4. It is noted that over the course of a year, the claimed method suppresses a reduction in ALSFRS-R score by 1.2 points. Examining the scale as detailed in the attached reference, it is noted that a reduction in 1 point can commonly result in a drastic reduction in the patient's quality of life, for instance, from being able to eat almost unassisted to requiring someone to cut up his or her food, or from intermittent use of a breathing assistance device to continuous use of a breathing assistance device during night, or alternatively, from use of such device at night to use of such device 24 hours a day. Thus, Applicants respectfully note that 0.6 points in half a year has a tremendously significant affect on an ALS patients' quality of life.

As averred to in the attached Declaration, the improvement in the patients' quality of life by using the claimed invention in view of Yoshino et al. is surprising and unexpected.

Thus, Yoshino et al. either alone or in view of the other cited references fail to render the claimed invention obvious as such references fail to teach or suggest the surprising and unexpected advantages of the claimed invention.

Thus, for the above noted reasons, these rejections are untenable and should be withdrawn.

CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

Hiide YOSHINO et al.

/William R. Schmidt, Digitally signed by /William R. Schmidt, II/
DN: cn=/William R. Schmidt, II/, o, ou,
email=bschmidt@wenderoth.com, c=US
Date: 2012.03.29 13:52:47 -04'00'

By II/

William R. Schmidt, II
Registration No. 58,327
Attorney for Applicants

WRS/srp
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
March 29, 2012